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Voluntary peer review of consumer protection law and policy of Morocco

Voluntary peer review of consumer protection law and policy: Morocco

Overview*

* The findings, interpretations and conclusions expressed herein are those of the author and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of consumer protection law and policy of Morocco.

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I. Introduction

1. In its resolution 70/186 of 22 December 2015 on consumer protection, the United Nations General Assembly reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement and policy. The guidelines promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The General Assembly also decided to establish an intergovernmental group of experts on consumer protection law and policy under UNCTAD to provide the international institutional machinery for the guidelines.

2. The Intergovernmental Group of Experts on Consumer Protection Law and Policy of UNCTAD is mandated to conduct voluntary peer reviews of national consumer protection law and policy, as implemented by national consumer protection authorities.[1] Morocco was the first UNCTAD member State to volunteer.

3. The purpose of the voluntary peer reviews is to provide an external and independent assessment of the effectiveness of consumer protection law; to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures; and to assist countries in implementing the recommendations by developing a capacity-building programme.[2]

II. Political, economic and social context

4. The Kingdom of Morocco is a constitutional, democratic, parliamentary and social monarchy, with a population of approximately 35 million inhabitants.[3] The human development index of Morocco for 2015 is 0.647. Between 1990 and 2015, in Morocco, life expectancy at birth increased by 9.6 years and the expected years of schooling increased by 5.6 years. Income per capita in Morocco increased by about 90 per cent between 1990 and 2015.[4] The World Bank recently reported that Morocco had made "undeniable economic progress" over 15 years, not only in terms of economic growth and living standards, but also in access to basic services such as electricity, water and public infrastructures.[5] Agriculture is the largest of all economic sectors, at 15 per cent of gross domestic product and accounting for 40-45 per cent of employment.[6] Tourism is the second largest sector, at 8 per cent of gross domestic product and 515,000 jobs, and with significant foreign currency earnings.[7]

5. The retail sector is evolving rapidly and has grown significantly in recent years. Likewise, electronic commerce is accelerating; the number of online purchases more than doubled in the three years leading to 2015, towards 2.5 million. The forthcoming consumer protection strategic plan of the Ministry of Industry, Investment, Commerce and Digital Economy (MIICEN) of Morocco refers to "radical changes in terms of both supply and the

[1] TD/B/C.I/CPLP/9.

[2] TD/B/C.I/CPLP/6.

[3] Data on Morocco for 2016. See World Bank, World Development Indicators database, available at http://databank.worldbank.org/data/reports.aspx?source=2&country=MAR (accessed 30 April 2018).

[4] United Nations Development Programme, 2016, Briefing note for countries on the *Human Development Report 2016: Human Development for Everyone*, Morocco, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MAR.pdf.

[5] World Bank, 2018, *Morocco 2040: Emerging by Investing in Intangible Capital*, available at https://openknowledge.worldbank.org/bitstream/handle/10986/28442/9781464810664.pdf?sequence=2&isAllowed=y.

[6] World Bank, 2017, The World Bank in Morocco, available at http://www.worldbank.org/en/country/morocco/overview (accessed 27 April 2018).

[7] Morocco, Ministry of Tourism, 2017, information communicated to members of an UNCTAD mission in December.

modalities of purchase, delivery and regulation". Nevertheless, non-digital purchasing still dominates the market, with 87 per cent of transactions.[8]

III. The substantive legislation

6. The Constitution of 2011 of Morocco refers to various issues related to consumer protection, without explicitly singling out consumers. These include "the defence and promotion of socioeconomic rights and interests", the rights of civil society to participate in public life, with privacy and with the right to information. Article 31 details citizens' rights in the domains of social protection, education, decent housing, access to water and a clean environment and sustainable development. A clause relating to the mediation office refers to "users" of services under public administration.[9]

A. Law No. 31-08 on consumer protection

7. Law No. 31-08 (2011), ordering consumer protection measures, is predominantly horizontal legislation, consisting of 206 articles. The Law establishes the fundamental consumer rights as well as scope and relevant definitions. It regulates in detail the obligations of businesses to provide information, provides protection against unfair contract terms and sets out business obligations in relation to specific business practices, such as guaranties and warranties, and deals with consumer indebtedness, consumer associations, infringements and penal sanctions.

1. Preamble, scope and objectives

8. The preamble to Law No. 31-08 sets out the fundamental rights of consumers, as follows:

- The right to information
- The right to protection of economic rights
- The right to representation
- The right to retraction
- The right to choose
- The right to be heard.

9. This list echoes some provisions of the Constitution (information, representation and economic rights). Furthermore, it also incorporates some of the key legitimate needs of Guideline 5 of the revised United Nations guidelines for consumer protection, their most frequently quoted text. [10] Article 3 of Law No. 31-08 lays down the principle that

[8] Morocco, Ministry of Industry, Investment, Commerce and Digital Economy, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

[9] Morocco, General Secretariat, 2011, *La Constitution*, Decree no. 1-11-91 (29 July 2011).

[10] See A/RES/70/186, annex. Under guideline 5, the following are the legitimate needs which the guidelines are intended to meet: (a) access by consumers to essential goods and services; (b) the protection of vulnerable and disadvantaged consumers; (c) the protection of consumers from hazards to their health and safety; (d) the promotion and protection of the economic interests of consumers; (e) access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs; (f) consumer education, including education on the environmental, social and economic consequences of consumer choice; (g) availability of effective consumer dispute resolution and redress; (h) freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them; (i) the promotion of sustainable consumption patterns; (j) a level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce; and (k) the protection of consumer privacy and the global free flow of information.

The right to retraction is a specific issue not featured in the Constitution of Morocco or the United Nations guidelines for consumer protection. Some of the legitimate needs listed in the United Nations guidelines are dealt with in other legislation of Morocco, such as consumer product safety (Law No. 24-09 on product and service safety, Law No. 28-07 on food product safety, Law No. 25-08 on the National Office for Food Product Safety, Law No. 13-83 on fraud repression on sold products, Law

information should be provided in a form that enables a rational choice to be made by the consumer according to needs and means.

10. The objectives contain high-level principles, such as the pro-consumer principle: "All other legislative provisions on the same subject are applicable if they are more favourable to the consumer." Article 2 of Law No. 31-08 addresses the question of definition of a consumer as follows: "All physical or moral persons who acquire or use products, goods or services, for purposes unrelated to work, for personal or familial use." Another significant element of scope is the application of consumer protection to State-owned enterprises, where the legislation of Morocco of 2011 seems to have anticipated the international trend towards including these types of businesses under application of consumer protection law, as contained in the revised United Nations guidelines for consumer protection of 2015.

2. Unfair contract terms

11. Article18 of Law No. 31-08 sets out, in a non-exhaustive list, the kind of contract term to be avoided, and article 16 demonstrates a certain flexibility in the judgment of when a contract term can be considered as abusive. Article 16 states that such consideration should take into account "the circumstances at the moment of the conclusion of the contract", reflecting also greater interest in context and principle rather than bare regulation.

3. Business practices

12. Title IV regulates in detail various business practices, including advertisement, distance contracts (which include electronic commerce), doorstep selling, discount sales, bonus sales, tie-in sales, Ponzi schemes, abuse of vulnerability and lotteries.

13. One of the fundamental consumer rights enshrined in Law 31-08 is the right to retraction, identified both in the preamble and in the text under distance contracts (articles 25–43). This is particularly relevant for online sales, as it is considered to entice consumers to trust electronic commerce (e-commerce).

14. The chapter on business practices contains a provision against the abuse of weakness or ignorance. Article 59 states that such abuse can result in the nullification of a contract and requires repayment to the consumer, plus such damages as may apply. This article is ahead of many other jurisdictions and is in line with guideline 5 of the United Nations guidelines for consumer protection, on the protection of vulnerable and disadvantaged consumers.

4. Indebtedness

15. Title VI devotes over 75 articles to consumer indebtedness, including consumer and housing credit, of the type that is more commonly found in sectoral legislation. The protection of consumers of financial services is relatively recent. Before Law No. 31-08, the governance of the sector came through the service itself, essentially a form of self-regulation or through arbitration, based partly on custom and practice and relating to 27 different laws.

5. Consumer protection associations

16. Title VII regulates the role of consumer protection associations. Their main functions are to ensure information and the promotion of consumer interests and to contribute to upholding the Law. They are required to be non-profit and operate without a business subsidy and to have no commercial advertising and no political affiliation.

17. Consumer protection associations can be recognized by the State as being of public interest on condition of meeting certain criteria listed in article 153. As yet, there are no

No. 18-88 on expiry date labelling and Law No. 75-291 on sanitary and qualitative inspection on livestock) and data protection (Law No. 09-08 on personal data protection). Morocco, General Secretariat, 2010, *Série "Documentation juridique marocaine"*.

consumer protection associations that have been awarded this status, which is a general prerequisite for judicial representation of consumers. Article 157 goes further, in envisaging the possibility of non-recognized associations to enter into judicial proceedings, having been authorized to do so by the consumer "and according to conditions set down by regulation". A decision of the Ministry of Justice to detail the modalities for delivering authorization to consumer protection associations to stand in court is currently under consideration.

18. Title VII allows consumer associations to receive public funding. Article 156 makes reference to the development of a national fund to be administered by MIICEN, with a view to "developing consumer culture". This is a pioneering initiative in the Middle East and North Africa (MENA) region, and MIICEN has invested over $1 million in the fund.

19. In line with United Nations guideline 45, on consumer education, Decree 2-12-462 also lists consumer education as an objective of consumer associations, accompanied by "orientation and awareness of sanitary, nutritional, environmental and commercial aspects". This covers a lacuna of Law No. 31-08, which does not refer directly to education campaigns by consumer associations. Education and information campaigns are directly undertaken by MIICEN and by consumer protection associations funded by the national fund.

6. Consultation mechanisms

20. Article 204 calls for the institution of a high advisory consumer council, as an independent institution, in charge of proposing and rendering opinions on proposed measures. This institution has not been established as yet, though it is currently one of the priorities of MIICEN for 2018–2021.

7. Regulatory development of Law No. 31-08

21. Law No. 31-08 foresees regulatory development of various provisions, through government regulations, known as implementing texts.[11] The legal tradition of Morocco allows for long delays between the adoption of laws and their regulatory development, which can in some instances impair the effects of legal provisions. Due to its cross-sectoral nature, consumer protection is particularly vulnerable to such delays, as consumer protection authorities rely on multiple ministries to establish the modalities of application. In the case of Morocco, the application of Law No. 31-08 requires action to be taken by a dozen ministerial departments.

22. Despite these difficulties, Law No. 31-08 has been applied through a series of 15 implementing texts (comprising decrees and decisions). These have emanated mostly from MIICEN, but also from the Ministry of the Economy and Finance and the Ministry of the Interior.[12] Many regulations apply to the technical and judicial functions of inspectorates.[13]

23. The main limitations identified by MIICEN for adequate enforcement of Law No. 31-08 include:[14]

- Absence of administrative sanctions
- Need to set up simple tools for compensation for damages outside of judicial procedures
- Restricted application of the law with focus on certain commercial practices, such as misleading advertising

[11] Articles, 3, 4, 12 and 61.

[12] Morocco, Loi no. 31-08 édictant des mesures de protection du consommateur et ses textes d'application (18 February 2011).

[13] For examples, see UNCTAD, 2018, *Voluntary Peer Review of Consumer Protection Law and Policy: Morocco* (forthcoming).

[14] Morocco, Ministry of Industry, Investment, Commerce and Digital Economy, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

- Need to reinforce the protection of consumers in relation to credit
- Need to reinforce the protection of the vulnerable population.

24. These limitations could be addressed in future amendments of Law No. 31-08, along with international best practices, in line with the United Nations guidelines for consumer protection.

B. Other relevant legislation

1. Financial services

25. Since implementation in 2015 of the new banking law, Law No. 103-12, there has been a universal right to have a bank account. Today, there are 20 types of free banking services available free of charge.[15] Sixty per cent of the Moroccan population is now covered by bank accounts. The law provides for bank deposit guarantees up to the value of approximately $8,800 and requires price indications, portability of accounts, mandatory complaints services within banks, a register of payment defaults and sanctions in cases of non-conformity with the law. Banks have to be licensed and informal loans are forbidden.[16] Interest rates for loans are regulated through the use of interest rate caps.

2. Protection of consumers against risks to health and safety

26. Law No. 28-07, on food safety, proceeds by way of determination of prior conditions of production and treatment of foodstuffs in addition to information and labelling of foodstuffs. It should be noted that the law includes the precautionary principle, also known as the precautionary approach. This principle is recognized in article 5.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization. It relates to situations in which the state of scientific knowledge may be insufficient to make a definitive judgment as to whether to block a product, but allows for a precautionary approach to be taken while the risk level is clarified.[17]

27. Law No. 24-09, on the safety of goods and services, imposes a "general safety obligation" on "producers and importers of products as much as on service providers" and indicates that penalties apply when the risk was undertaken knowingly or where the providers had a responsibility to know. This obligation avoids the problem, common in various countries, of proving prior knowledge of risk, which is a difficult exercise for enforcers. Law No. 24-09, which supplements general civil law obligations, does not extend to strict responsibility of producers and distributors, as is the case in other countries.[18]

3. Protection of consumer privacy

28. The rights of consumers to the protection of their privacy are strengthened by the Constitution of Morocco, revised in 2011, which proclaims in article 24 that "all persons have the right to protection of their private lives". Law No. 09-08, on the protection of

[15] Information communicated to UNCTAD by the Ministry of Economy and Finance of Morocco during a mission in November 2017. Law No. 103-12 regarding credit establishments and linked organizations, *Official Bulletin No. 6340* of 5 March 2015, grants the universal right to a bank account. Implementation of Law No. 103-12 is overseen by the Ministry of Economy and Finance.

[16] In 2017, for example, a licence to operate was issued for participative (Islamic) banks, as foreseen in Law No. 103-12.

[17] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication. New York and Geneva), chapter 9. The Agreement on the Application of Sanitary and Phytosanitary Measures applies to foodstuffs and not to manufactured products or services.

[18] For example, strict responsibility was introduced into European Union law by the Product Safety Directive of 1985 (modified in 1999) and adopted by the Council of the European Communities on 25 July 1985. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0374&from=EN.

physical persons regarding the processing of personal data,[19] establishes the following rights:

- Requirement of express consent as a condition of data collection
- Information regarding use of data
- The right to access to data held as well as their origins and destinations
- The right to rectification without charge in the event of error within a deadline;
- The right of appeal to the National Commission for the Control of Personal Data Protection;
- The right to express opposition to the collection of the data.

29. Data users, in this context, businesses, are required to ensure that data are collected fairly, legally and transparently.

4. Standardization

30. The development of an arms-length relationship between the State and standards institutions is key to the development of standards worldwide. Law No. 12-06, on standardization, provides greater autonomy for the Moroccan Standards Institute, which had before been an integral part of MIICEN.[20] The Government of Morocco has retained certain powers of orientation, but article 22 demonstrates the intention to use such powers as advised by economic and social partners and technical committees of the Institute.

31. Morocco maintains a strong link between standardization and regulation. Article 33 of Law No. 12-06 also envisages the transition from a voluntary standard to a mandatory standard, when that is "deemed to be necessary by the competent governmental authority". However, in practice, the vast majority of standards remain voluntary. Of 14,400 adopted standards, only 280 are mandatory.

IV. Institutional framework

A. Public institutions

1. Government

32. MIICEN is responsible for the conception and implementation of government policy in the areas of industry, commerce and new technologies, except where these are assigned to other ministerial departments by laws or regulations in force.[21] One of the responsibilities of MIICEN is to "ensure control in the domains of metrology, certification, quality, safety in the enterprise, surveillance of the market and consumer protection".[22]

33. Within MIICEN, the Directorate of Consumer Protection, Market Surveillance and Quality hosts the Department for Consumer Protection (DPC), which is the consumer protection authority of Morocco. Given the horizontal nature of consumer protection, many other ministries have a stake in consumer protection.[23] DPC invests a great deal of effort in establishing bilateral cooperation arrangements with such relevant ministries.

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[19] Morocco, Law No. 09-08 on personal data protection, *Official Bulletin No. 5714* of 5 March 2009

[20] Law No. 12-06 on standardization, certification and accreditation, *Official Bulletin No. 5822* of 18 March 2010.

[21] Morocco, Ministry of Industry, Investment, Trade and Digital Economy, see http://www.mcinet.gov.ma/en/content/missions (accessed 25 April 2018).

[22] Ibid.

[23] Ministry of Energy, Mines, Water and Environment, Ministry of the Interior, Ministry of Economy and Finance, Ministry of Housing, Urbanism and City Policies, Ministry of Agriculture and Sea Fishing, Ministry of Equipment, and Transport, Ministry of Tourism, Ministry of Handicrafts, Ministry of Health, Ministry of General Affairs and Governance and Ministry of Justice. See http://www.khidmat-almostahlik.ma/portal/fr/acteurs/administration-etablissement-publique.

2. Consumer protection authority

34. **Strengthening the regulatory framework of Law No. 31-08 and its enforcement.** DPC is charged with strengthening the legal framework, overseeing application of the consumer protection law in the market, communicating with consumers and raising awareness of their rights in the marketplace, along with other relevant stakeholders, in particular consumer protection associations[24] and businesses, and developing a consumer movement. DPC consists of only about 10 staff. MIICEN has in addition more than 70 qualified and certified inspectors on the ground. The Ministry of Interior is training 400 inspectors, with the assistance of MIICEN, and these inspectors should be operational throughout the territory of Morocco by May 2018. MIICEN investigators that were trained and officially sworn in began field inspections in 2016.

35. The record of the control operations carried out up until 31 December 2017 is as follows:

- 836 controlled establishments, mainly grocery, specialty and other retail stores
- 11,636 controlled aspects (labelling, display, invoices, etc.)
- 2,429 instances of non-conformity found, mainly in relation to price display, labelling and invoices
- 105 warnings sent to offenders regarding non-compliance.

36. An e-commerce inspection within DPC carried out 120 surveillance operations, including 20 sites, which were inspected in 2016 and received admonitions. These operations led to sending more than 100 admonition letters to concerned businesses with a view to encouraging compliance with Law No. 31-08. In the past, public administrations struggled to exercise their powers under Law No. 31-08 to inspect Internet sites. Since January 2017, e-commerce is supervised by the Centre for Surveillance of Electronic Commerce, a new unit within MIICEN.[25]

37. **Support to the national consumer movement.** In 2017, the MIICEN signed new financing agreements with three federations of consumer protection associations, namely:

- The Moroccan Federation of Consumer Rights
- The National Federation of Consumer Associations
- The Southern Federation of Consumer Protection Associations.

38. In an effort to professionalize the consumer counters or advice points run by consumer protection associations, a standard operating manual has been developed by DPC.[26]

39. **Information, awareness-raising and training.** DPC carried out several information, awareness-raising and training activities, in particular:

- Consumer portal. The portal www.khidmat-almostahlik.ma is an online platform available in Arabic and French. It aims at increasing citizens' awareness of their rights. A wide range of information is available, including regulations, fact sheets, guides and contact details of consumer protection associations. The portal provides information to consumers about their legal rights and serves as an entry point to several institutions and organizations concerned with consumer protection. The portal received 41,770 visits in 2017, a year on year increase of 14 per cent. In 2017, the portal received 791 admissible claims, representing an increase of 64 per cent in relation to 2016. The sectors most concerned were telecommunications (29 per cent) and general retail (22 per cent), followed by agriculture and fishery and financial services. Regarding the types of claims, 27 per cent related to non-compliance with

[24] Regardless of whether they are considered of public interest or not (see paragraph 17 of the present document).

[25] Morocco, MIICEN, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

[26] Morocco, MIICEN, 2017, *Manuel de fonctionnement des guichets consommateur*, Rabat.

legal and conventional warranties, defective goods and after-sales service, and 24 per cent related to a lack of information on price, labelling and undue delays in delivery.

- National Consumer Days. DPC organized several annual meetings gathering all relevant stakeholders aiming to promote a culture of consumer protection in Morocco. These meetings are organized in close collaboration with the concerned partners, in particular consumer protection associations and ministerial departments. In 2017, 30 local events were organized in 28 cities. The 2018 national day was chaired by the Secretary of State of MIICEN, who stressed the Ministry's sustained commitment in relation to consumer protection, stating: "This is a priority project that places the citizen at the heart of action and for which the Government has launched a series of concrete measures".

3. National food safety office

40. The National Office for Health Security of Food Products is an agency independent from the Government, created in 2010. The Office is responsible for a wide range of food safety measures, including inspection of abattoirs, and is empowered to seize non-conforming products and destroy them if necessary, as well as to levy fines. Premises can be closed down by inspectors working from regional governors' offices. The inspectors reporting to the governorates are independent, and their powers are being brought into the National Office for Health Security of Food Products. The Office periodically mounts campaigns to warn consumers against risks, particularly during national festivities, and runs a blue-line telephone alert system.

4. Personal data protection

41. The National Commission for the Control of Personal Data Protection is an autonomous authority charged with ensuring that the use of personal data does not prejudice personal privacy. The Commission has authority over private and public institutions and their conformity with Law No. 09-08 on personal data protection. The Commission can take judicial action and apply financial and penal sanctions, in the event of infringements of the Law.[27]

42. The Commission's functions are as follows:

- Address individual complaints
- Address requests for authorization by data users (the Commission is empowered to withdraw permits to gather and keep data, thus in effect acting as granter of licence to trade)
- Keep the public register of data users
- Respond to requests for advice from Government and Parliament.

5. Standardization

43. The Moroccan Standards Institute is a public body under the umbrella of MIICEN, which assumes the secretariat function and acts as rapporteur for the High Council for Standardization, Certification and Accreditation, over which the Prime Minister presides. The High Council includes representatives of economic partners, such as sectoral chambers of commerce, labour unions, consumer protection associations and representatives of bodies that conduct research on standardization. The experience of the High Council for Standardization, Certification and Accreditation can serve as a basis for exploring development of consultation mechanisms on consumer protection issues, which could be led by DPC.[28]

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[27] Morocco, National Commission for the Control of Personal Data Protection, leaflet, available at http://www.cndp.ma/images/documents/CNDP-depliant-fr.pdf.

[28] Morocco, Law No. 12-06 relating to standardization, certification and accreditation, Decree No. 1-10-15 of 11 February 2010.

6. Financial services

44. The Central Bank has sought to link with government departments concerned with consumer protection, such as DPC and the Competition Council. Consumer associations have been able to develop model contracts with banks that incorporate international good practices, such as the United Nations guidelines for consumer protection.[29] The model contracts are published in the Official Bulletin.

45. Alternative dispute resolution is being developed in this sector. There is a mediation centre, organized by the Central Bank and banking associations, that receives 500 cases per year. A consumer has the right to go directly to the Central Bank in case of dispute. Decisions of the mediation service are binding on banks. The recommendations of the service have contributed to the development of good practices.

7. Public prosecution and the judiciary

46. The prosecutor-general's office takes criminal cases, operating under the supervision of the Ministry of Justice, with an autonomous status and its own budget. Magistrates from the judicial branch have issued a range of judgments on Law No. 31-08, strengthening it as an instrument of protection of the consumer. This has proved to be the case particularly in the field of consumer credit. Among the significant interpretations in favour of the consumer have been the following:

- Article 9: interpretation of Law No. 31-08 to be presumed to favour the consumer
- Article 34: burden of proof to reside with the supplier
- Article 202: delineation of the competence of a court in relation to the residence of the consumer
- Article 59: exploitation of the ignorance or weakness of a consumer as a criminal offence, leading to nullification of a contract
- Primacy of consumer protection over commercial law regarding bank loans.

47. This indicates the potential significance of complete application of the present Law No. 31-08, even without further amendment.

B. Other stakeholders

1. Chambers of commerce

48. There are 12 regional chambers of commerce, under the supervision of MIICEN. The chambers of commerce participate in National Quality Week, organized by the Directorate of Consumer Protection, Market Surveillance and Quality, and in events with consumer protection associations, providing, for example, briefings on Law No. 31-08.

49. The Federation of Chambers of Commerce looks forward to participating in the high advisory consumer council, as envisaged under article 204 of Law No. 31-08.[30] The council, once established, will have the potential to become a forum for the development of self-regulatory codes.

2. Consumer protection associations

50. There are 90–100 consumer protection associations currently operative at the local level, of which 38 operate a consumer counter as an advice point. Decree no. 2-12-462, which addresses the status of public interest of consumer protection associations, makes no explicit mention of the potential role of consumer protection associations in the development of public policy. The role of consumer protection associations is recognized

[29] A/RES/70/186, annex, guideline 66; Organization for Economic Cooperation and Development, 2011, Group of 20 high-level principles on financial consumer protection, available at https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf.

[30] Morocco, MIICEN, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

by means of mention of their intended inclusion within the high advisory consumer council, yet to be established, as envisaged in 2011 in Law No. 31-08.

51. Though article 6 of Decree no. 2-12-462 refers to consumers' representation, there is little further detail.[31] Article 6 of the Decree (objectives and missions) states that a major objective is "to contribute to extrajudicial dispute resolution". Article 24 requires that such resolution be accompanied by attempts to reach an amicable solution, in default of which court proceedings can be envisaged. In fact, the National Federation of Consumer Associations estimates that 72 per cent of disputes brought to them are settled amicably. Yet, consumer protection associations consider that they are wrongly excluded from judicial proceedings. Enactment of a decision that addresses the issue of consumer protection associations' standing in dispute resolution is needed to resolve this issue. The legislation does not seem to have caught up with the actual activities.

52. Furthermore, Law No. 31-08 grants consumer protection associations the right to intervene in judicial proceedings on behalf of consumers. However, this right has not been exercised by consumer protection associations as envisaged. One explanation might be the onerous conditions for exercising such a right (declaration of public interest or special authorization). Another explanation might be the lack of technical capacities for consumer protection associations to intervene in court.

V. International cooperation

53. MIICEN and DPC have proved very active in strengthening international cooperation with neighbouring countries, for example, through a twinning programme with the European Union within the framework of a European cooperation agreement. This programme, which linked MIICEN with a Franco–Belgian consortium, started in May 2015 and continued for a period of 27 months.[32]

54. Furthermore, Morocco is one of the eight beneficiaries (including Algeria, Egypt, Jordan, Lebanon, Tunisia, Yemen and the State of Palestine) of the UNCTAD MENA technical cooperation programme (2015–2019), funded by Sweden, promoting regional economic integration through improved competition and consumer policies, aiming for a positive impact on gender balance, good governance and anticorruption. This programme privileges instruments and initiatives, namely the strengthening of capacities of public bodies and relevant stakeholders, with a regional focus providing the sharing of experiences and for increased cooperation. One of the programme's outputs is the *Guidelines on Consumer Protection: Agency Structure and Effectiveness*[33] for the MENA region, drafted in 2017 on the basis of the international benchmarks for consumer protection.

55. At the same time, there are other forms of cooperation that can be envisaged by DPC. For example, Morocco is seeking greater involvement and communication with the European Union's system of notification of dangerous non-food products.[34] Also in the area of product safety and more recently, the Organization for Economic Cooperation and Development has developed the Global Recalls portal, [35] a worldwide network for notification of products withdrawn from national markets. The portal is not restricted to member States of the Organization for Economic Cooperation and Development. The portal is regularly updated and includes information on mandatory and voluntary consumer product recalls that were issued by a governmental body. Consumers and businesses have access to the portal and global coverage is envisaged eventually.

[31] Decree No. 2-12-462 of 14 November 2012 on the model statutes of consumer protection associations recognized as having public interest status.

[32] Protecting the Moroccan consumer, twinning project no. MA/34, under the Réussir le Status avancé programme (ENPI/2011/022-778), financed by the European Union.

[33] UNCTAD, 2017, *Guidelines on Consumer Protection: Agency Structure and Effectiveness* (United Nations publication. New York and Geneva).

[34] Rapid Alert System for dangerous non-food products of the European Commission, available at https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/.

[35] https://globalrecalls.oecd.org/.

56. The International Consumer Protection and Enforcement Network[16] is composed of organizations in over 50 countries (though Morocco is not a member) and aims at sharing information about cross-border commercial activities that may result in consumer detriment. Membership is predominantly from countries of the Organization for Economic Cooperation and Development, but other countries are also members. Another relevant network for exchanges is the African Consumer Protection Dialogue, supported by the Federal Trade Commission of the United States of America. It may be beneficial for Morocco to participate in such forums for the purposes of increasing capacities and strengthening cooperation.

VI. Conclusions and recommendations

A. Conclusions

57. The legal and institutional framework of Morocco for consumer protection is well established and fully operational. Morocco has been ahead of other jurisdictions in certain fields such as enacting a comprehensive consumer protection legislation since 2011, covering basic rights and obligations of consumers and businesses and providing an enabling environment for consumer protection organizations.

58. The institutional framework for consumer protection in Morocco is comprehensive and complex. As a result of consumer protection's horizontal nature, consumer protection responsibilities are shared among various public authorities, as is the case in many other countries. An interministerial approach is thus essential, reinforced by training and briefing in all the relevant ministries. The pedagogical approach taken by DPC is widely endorsed by the other ministries and reduces the risk of duplication.

59. Morocco enjoys a vibrant network businesses and consumer protection associations. DPC has invested considerable efforts in raising awareness and capacities among businesses and consumer associations. DPC has been discharging its functions effectively and is increasingly recognized as the focal point on consumer protection issues at the national, regional and international levels.

60. The recently revised United Nations guidelines for consumer protection provide valuable guidance on possible future improvements both at the legal and institutional levels. Furthermore, the UNCTAD *Guidelines on Consumer Protection: Agency Structure and Effectiveness* for the MENA region contain several recommendations to improve the legal and institutional frameworks.

B. Recommendations

1. Substantive aspects of Law No. 31-08

(a) Regulatory development

61. For effective implementation of Law No. 31-08, Morocco needs to complete the adoption of its implementing legislation. Although there have been notable efforts in this direction (with two decrees and 13 decisions issued), interministerial cooperation needs to be pursued in order to ensure there are no regulatory limitations to full applicability of Law No. 31-08 by consumer protection agencies and their agents.

(b) Principles for good business practices

62. Law No. 31-08 deals in detail with many elements of commercial practice described in the forthcoming UNCTAD *Voluntary Peer Review of Consumer Protection Law and Policy: Morocco*. It also sets out the principle that, in case of ambiguity in contracts, the benefit of the interpretation should go to the consumer. Abuse of ignorance or vulnerability

[16] https://www.icpen.org/

on the part of the consumer is also penalized under article 59; its application can result in the nullification of contracts and could be perhaps be further developed in Law No. 31-08 or in regulations. This could for example be extended to aggressive marketing practices; under such situations, those covered by the concept of vulnerability could extend to a relatively wide range of the population.

63. Article 59 is a good example of principles-based legislation extending a general level of protection. A wider use of principles-based legislation is advisable. Experience in many jurisdictions suggests that highly detailed proscriptions of identified practices can lead to businesses responding by developing procedures designed to evade legal limitations. More flexible legislation based on principles can provide a valuable foundation for more detailed provisions in subsequent regulations and policies.

64. In particular, article 18 of Law No. 31-08 lists types of contract terms considered to be abusive, while article 16 refers to the overall context of the transaction. It is not necessary that every example be precise, nor should the list be exhaustive; that is, other commercial practices not listed should be admissible. It is thus recommended that Law No. 31-08 be amended to include common examples of unfair commercial practices applicable to all sectors of commerce and that their determination be left to regulatory, case law or enforcement practice.

(c) Access to justice

65. Although Law No. 31-08 grants consumer protection associations the right to intervene in judicial proceedings on behalf of consumers, this right has not been exercised by consumer protection associations as envisaged. It is recommended that Decree no. 2-12-462 of 14 November 2012 setting the conditions for consumer protection associations participation in judicial proceeding be revised, in order to facilitate the exercise of this right. Furthermore, DPC could provide legal training to consumer protection federations to reinforce their litigation capacities.

(d) Alternative dispute resolution

66. Consumer dispute resolution and redress in Morocco are exercised by the judicial branch. However, mediation to settle consumer disputes is being introduced on a sectoral basis in Morocco in the financial services and telecommunications sectors. This could be extended to other sectors in order to cover as many consumer relations as possible, ideally covering all economic sectors. In United Nations guidelines for consumer protection, guidelines 37 to 41 on dispute resolution and redress provide useful recommendations in this regard.

67. DPC is in a privileged position to encourage the development of consumer mediation, as it can coordinate and ensure the participation of relevant ministries, public institutions and other stakeholders. The DPC Internet portal could serve as a basis to develop and disseminate online dispute resolution for consumer disputes.

(e) Electronic commerce

68. In line with guidelines 5 (j) (legitimate needs) and 63 (e-commerce) of the United Nations guidelines for consumer protection, Morocco should ensure that online consumers enjoy a level of protection that is no less than that afforded to other forms of commerce.

69. Law No. 31-08 contains provisions relating to e-commerce, including the right to retraction, which might be reviewed, in light of the revised United Nations guidelines for consumer protection, to address new challenges such as the obligations of platforms. In so doing, it is recommended that Morocco should preserve principles-based regulation to allow for future market developments.

(f) Financial services

70. Law No. 31-08 contains very detailed provisions regarding consumer credit and housing loans. However, it is silent on overindebtedness, its prevention and its

consequences, and on inclusion, both of which are emerging best international practices and are present in the revised United Nations guidelines for consumer protection.

71. In particular, it is recommended that Law No. 31-08 should include more general provisions on the promotion and protection of consumers' broad financial interests and include enabling regulations to promote financial inclusion and protection against overindebtedness. The relationship between financial services providers and their authorized agents may best be regulated by the law.[37]

72. For example, Law No. 31-08 could establish the obligation of verification of creditworthiness of borrowers. This would contribute to the development of responsible lending, an emerging principle that is also endorsed by the guideline 66 (f) of the United Nations guidelines for consumer protection. Law No. 31-08 could also envisage the development of debt repayment plans for cases where indebtedness is not linked to infractions from either the consumer or the lender, but rather to life events.

(g) Enforcement powers

73. Law No. 31-08 foresees the judicial enforcement of consumer protection. In order to complement judicial action, Law No. 31-08 could be amended to allow for administrative enforcement. This would reinforce the market surveillance of DPC and allow DPC to move beyond its current admonitions, to imposing administrative injunctions and sanctions for breaches of consumer protection laws. Direct administrative enforcement powers could be granted to enforcement bodies, in particular DPC, without the need for them to resort to the courts.

(h) Codification

74. The extensive consumer protection legislation of Morocco encompasses most economic activities and extends through various pieces of legislation. For example, Law No. 31-08 deals with consumer credit while other, sectoral legislation includes consumers' rights, as is the case of financial services and public utilities laws.

75. In order to ensure a comprehensive and coherent regulation of consumer protection and to increase stakeholders grasp of consumer complex issues, some countries, such as Brazil and France, have developed a consumer code. Such codes gather and systematize consumer protection legislation and rationalize institutional frameworks. The legal tradition of Morocco of codification (civil, commercial and labour laws are already codified) could allow for the development of a code. This would also provide an occasion to review the consumer protection legislation of Morocco as a whole, in the context of the United Nations guidelines for consumer protection.

2. Institutional frameworks

(a) Enforcement, coordination and public profile

76. Law No. 31-08 could be strengthened to allow for the administrative enforcement of consumer protection. As the consumer protection authority of Morocco, DPC is in a good position to assume such powers, including conducting investigations and ordering administrative sanctions and injunctions.

77. DPC has invested considerable efforts in ensuring coordination with other ministries and departments, as well as consultation with consumer protection associations and business representatives. Developing formalized consultation mechanisms, such as the high advisory consumer council of article 205 of Law No. 31-08, can prove beneficial in this sense. DPC could also assume a more active role in providing advisory opinions to government draft regulations and policies, to ensure that consumer interests are taken into account.

78. DPC should further reinforce its role of serving as focal point for consumer protection matters, by promoting its public profile. The DPC online portal provides easily

[37] See A/RES/70/186, annex, guidelines 11 and 66 to 68.

accessible information to consumers and allows for electronic claims to be filed. The website should be promoted and its content enriched with education and information campaigns, publications, research and studies that DPC may conduct in the future. DPC could also harness social media platforms and hotlines to build its public profile vis-à-vis consumers and businesses.

(b) Building of capacities

79. DPC could develop standardized training programmes for Government officials and judges using UNCTAD's capacity building instruments such as the UNCTAD *Manual on Consumer Protection*,[38] and the *Guidelines on Consumer Protection: Agency Structure and Effectiveness* of UNCTAD for the MENA region. DPC could also develop a general training programme for consumer protection associations and businesses, for which UNCTAD published the *Guidelines on Consumer Protection: Business Engagement*[39] for the MENA region, while guidelines on consumer associations for the MENA region are forthcoming.

80. In this effort, DPC should seek to establish stable partnerships with federations of consumer associations, chambers of commerce and academic institutions through training-of-trainers activities, thus ensuring a positive multiplier effect. DPC could also envisage developing joint awareness-raising campaigns with consumer protection associations.[40]

(c) Consumer protection associations

81. Financial support of Morocco for consumer protection associations is a pioneering experience in the MENA region, addressing the perennial problem of consumer associations' sustainability. As the national fund for consumer protection associations is being deployed, it is important to ensure the accountability of consumer protection association activities, and assess high impact results, through continuous evaluation and auditing procedures. In contributing to the professionalization of consumer protection associations, DPC should also pursue providing them with training, especially if new pieces of regulation enable consumer protection associations to pursue new functions.

(d) Resources

82. In line with guideline 15, of the United Nations guidelines for consumer protection, on national consumer protection policy, Morocco should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases. DPC has a presence in all of the territory of Morocco, through its 29 regional delegations. However, the current human and financial resources available impair regional offices from discharging DPC functions fully, especially with regard to surveillance and awareness raising. For this purpose, it is recommended that DPC staff be increased and that training be provided.

(e) International cooperation

83. DPC has been active in accessing international cooperation and sharing of best practices at UNCTAD and the European. Participation in the International Consumer Protection and Enforcement Network and the African Consumer Protection Dialogue may prove particularly beneficial, should DPC assume enforcement powers. DPC could also explore the possibility of concluding agreements with peer authorities to leverage existing international experience, in line with guideline 82, of the United Nations guidelines for consumer protection, on cross-border cooperation. DPC should take advantage of international meetings to become familiar with international best practices and, in turn, integrate them into its own practice.

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[38] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication. New York and Geneva)

[39] UNCTAD, 2017 (United Nations publication. New York and Geneva)

[40] Law No. 31-08 envisages a single federation.